

MODEL AGREEMENT FOR WASTELOAD ALLOCATION TRANSFER

DRAFT: For Demonstration Purposes Only 09/18/00

THIS AGREEMENT is made this first day of January, 1999, between the CITY of MIDDLETON (Middleton) and the CITY OF BOISE CITY (Boise).

WHEREAS, Middleton and Boise operate wastewater treatment facilities within the Lower Boise River Watershed, and;

WHEREAS, the Lower Boise River Total Maximum Daily Load (Lower Boise TMDL), was approved by EPA on _____ and has been incorporated in part, in the state water quality management plan, and;

WHEREAS, the TMDL incorporates a seasonal no net increase approach for total phosphorus, and allocates a seasonal total phosphorus load of X pounds per day to Middleton and X pounds per day to Boise and ;

WHEREAS, trading is encouraged as a tool to address TMDLs in state water quality standards (IDAPA 16.01.02.054) and trading rules have been established in state water quality management plan provide for trades between wastewater treatment facilities to accommodate development while satisfying water quality issues contained in the Lower Boise TMDL, and ;

WHEREAS, Boise has achieved reductions in total phosphorus discharges from the baseline conditions contained in the TMDL and can sell total phosphorus credits to Middleton, and;

WHEREAS, Middleton must obtain additional total phosphorus wasteload allocation or provide a higher level of treatment to satisfy the conditions of the Lower Boise TMDL;

WHEREAS, Middleton and Boise desire to implement the water quality trade within the Lower Boise watershed, whereby point source to point source transfers may be completed, and;

WHEREAS, Middleton and Boise desire to enter into this Agreement, whereby Boise agrees to an interim transfer of portion of its total phosphorus wasteload allocation to Middleton, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, Middleton and Boise agree as follows:

1. ALLOCATION TRANSFER

Boise hereby transfers to Middleton five (5) Parma Pounds per day of Boise's seasonal total phosphorus wasteload allocation (Transferred Allocation), subject to the terms and conditions of this Agreement.

2. RETURN OF Boise' s Transferred ALLOCATION

Middleton agrees to use its best efforts to secure its own phosphorus wasteload allocation through multiple mechanisms, including but not limited to: (1) point source to point source transfers, (2) nonpoint source to point source trades, (3) phosphorus concentration reductions through alternative treatment, or (4) a new wasteload allocation. Middleton agrees to use its best efforts to secure a phosphorus allocation equivalent to five (5) Parma Pounds per day or such greater total phosphorus wasteload allocation required for compliance with Middleton's no net increase baseline allocation contained in the Lower Boise TMDL.

3. COMPENSATION

Middleton agrees to pay certain compensation to Boise in connection with the trade.

Middleton agrees to pay Boise \$X.00/lb/day or (\$X,XXX annually) for 5 pounds total phosphorus per day. Additional effluent monitoring at the Middleton WWTF that may be required associated with this trade is solely the responsibility of Middleton.

4. MEMBERSHIP

Middleton and Boise agree to become and remain members of the Idaho Clean Water Cooperative for the duration of the term of this Agreement.

5. REALLOCATIONS

If during the term of this Agreement, the phosphorus wasteload allocations in the Lower Boise TMDL are reallocated, Boise shall support the allocation of five (5) pounds per day of total phosphorus to Middleton by, *inter alia*, voting affirmatively for the allocation, signing letters endorsing the allocation, and appearing at relevant meetings in support of the allocation. Boise shall not use this Agreement as a basis for objecting to an allocation to Middleton of at least five (5) pounds per day, or such greater amounts as may be determined to be necessary for Middleton's compliance with this Agreement.

6. REGULATORY AMENDMENTS

Both parties agree to support -- by, *inter alia*, voting affirmatively, signing endorsement letters, and appearing at relevant meetings -- modifications to the Control Regulation to provide for transfers of phosphorus allocations and concentrations, and development of a trading program in the Lower Boise Watershed.

7. ASSIGNMENTS

Neither party to this Agreement shall assign, subcontract, or otherwise transfer its rights or obligations under this Agreement without prior written consent of the other party, which shall not be unreasonably withheld. For the purposes of this Agreement, Boise hereby consents to

Middleton's assignment of the Agreement to any of the following entities: any water and wastewater special district, any existing wastewater treatment facility or district within the Lower Boise watershed, or any other local governmental entity that assumes primary responsibility for wastewater treatment within the Lower Boise River watershed.

8. AGREEMENT TERM

This Agreement shall have a term of five (5) years, with the option of three (5) year renewals. Middleton must request the renewals by December 1 of the fourth year of this Agreement for the first renewal, and December 1 of the ninth and fourteenth years of this Agreement, provided the Agreement has been previously renewed. Boise has sixty (60) days to confirm the renewal. Boise can refuse to renew if Boise needs, or expects to need within the period of the requested renewal, the total phosphorus allocation to provide wastewater treatment within its service area. If Middleton does not request renewal or Boise denies any renewals, this Agreement shall terminate upon the expiration of that term.

9. TERMINATION

This Agreement may be terminated prior to the expiration of the Agreement term or prior to the expiration of any succeeding renewal terms, as follows:

- a. By mutual consent of both parties;
- b. By Middleton, if regulatory modifications or any other circumstances render, in the opinion of Middleton, the Agreement unnecessary; or,
- c. By Boise, if regulatory changes or any other circumstance reduce Roxborough's allocation of wasteload credits at any time during the term of this Agreement.

1 NOTICE

For the purposes of this Agreement, all notices, Reports, inquiries, and other correspondence related to this Agreement shall be given to the parties with copies to their legal counsel and engineers as follows:

Boise:

Richard Dees, Operations Manager

With copies to
Engineers:

Carl Ellsworth, P.E.
Boise City Public Works 150 N Capitol Boise, ID
83701

Legal Counsel:

Doug Strickling, Esq.

Boise City Attorney's
Office
Boise, ID 83701

Middleton:

Bob Schmillen Middleton WWTF Address Middleton,
ID 83XXX

With copies to

Engineers:

Mike Holladay, P.E. Holladay Engineering Co.

And

Some Lawyer, Esq.

Legal Counsel:

Attorneys R US, L.L.P. M Street, Suite 0 Anywhere ID
83000

Notice shall be transmitted by depositing the notice with prepaid postage in the U.S. Mail or with a courier. Either party may, from time to time, change the name and/or the addresses of the persons to receive notice.

2. CHANGES AND AMENDMENTS

No changes or modifications to this Agreement shall be valid unless they are made in writing and signed by both Boise and Middleton.

3. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements or understandings, whether oral or in writing, between Boise and Middleton.

4. APPLICABLE LAW

This Agreement shall be subject to and governed by the laws of the State of Idaho.

5. LEGAL REQUIREMENTS

This Agreement and the rights and duties established herein shall be subject to any and all applicable federal, state or local legal requirements, including any necessary governmental approvals.

6. SEVERABILITY

If any provision of this Agreement is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Agreement. Each provision of this Agreement is declared to be separable from every other provision and constitutes a separate and distinct covenant.

7. HEADINGS

The headings in this Agreement are provided for convenience only and shall not be considered when interpreting any of the provisions of terms of this Agreement.

8. EFFECTIVE DATE

This Agreement shall be effective _____, 1999.

Boise City By:

Title

Middleton By:

Title